

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

In re Examination of)	DECISION ON PETITION
)	FOR REVIEW OF DIRECTOR'S
)	FINAL DECISION UNDER
)	37 CFR § 10.2(c)
)	

I

Petitioner asks the Commissioner to review a decision of the Director of the Office of Enrollment & Discipline (OED) dated March 23, 1992, denying relief in-part on request for regrade of the afternoon section of the registration examination held on August 21, 1991. To the extent the petition complies with 37 CFR § 10.2(c), the Director's decision has been reviewed. The relief requested is denied.

II

In response to Part I, Option A, of the afternoon section of the examination, petitioner was directed to prepare a complete response to the Office action. The response must include presentation of:

a new single independent claim which defines the novelty of the invention as set forth in the object of the invention and which distinguishes your client's invention over the teachings of the . . . prior art.

The claim petitioner drafted did not include a limitation that the fiber optic strands form or act as the brush bristles.

The grader deducted six (6) points because the proposed claim "doesn't state fibers form bristles" in defining the novelty of the invention as set forth in the object of the invention and deducted two (2) additional points because petitioner did not

argue that applicant's invention was distinct from the teaching of the prior art because the prior art "doesn't state fibers form bristles."

III

Petitioner alleges that:

1. Nothing in the drawings and written description of the invention supports a limitation that the fiber optic strands form or act as the brush bristles.
2. The detailed description merely suggests that the fiber optic strands transmit the light to the bristles.
3. The grader's phrase "fibers form a brush" is not supported by the specification, does not have antecedent basis in the specification, is not shown in the drawing, and is not a proper claim limitation.

IV

Petitioner's arguments are not persuasive. In the object of the invention, applicant defined the novelty of the invention as follows:

[I]t is the object of the present invention to provide a brush device having plastic fiber optic filaments which act as bristles and which transmit light having greater intensity than the original light source to the tips of the bristles to illuminate the area in close proximity to the bristles. . . . There is also provided a plurality of plastic optic fiber filaments [L]ight is transmitted through the magnification means and a plurality of plastic filaments so that light emanates from the filaments forming the bristles. (Emphasis added.)

Applicant's definition of the novelty of the invention in the above object of the invention reasonably is not open to any other interpretation but that plastic fiber optic filaments act as and form the bristles for the brush; i.e., "fibers form bristles" as noted by the grader. The drawing may not be reasonably interpreted inconsistent with the object of the invention as expressed by applicant.

As shown above in the applicant's object of the invention, petitioner's statement that "[n]othing in the detailed description or drawing of the invention refers to the bristles as being of optical fibers" is incorrect. Furthermore, the claim petitioner drafted suggests that petitioner himself did not view the drawing as depicting a space between the optical fibers and the bristles in the head:

(f) the head end of the housing containing a plurality of apertures, and fiber optic strands co-located within the apertures, and piercing the surface of the head . . .

It was petitioner's understanding from the detailed description and drawing of the invention that the fiber optic strands pierced the surface of the head, i.e., the fiber optic strands would not and could not terminate within the apertures.

Petitioner is correct in stating that the fiber optic strands transmit light to the bristles. However, the object of the invention as described by applicant was more specific:

plastic fiber optic filaments which act as bristles and which transmit light having greater intensity than the original light source to the tips of the bristles to illuminate the area in close proximity to the bristles. . . .

Petitioner was directed to draft a claim "particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention" as required under 35 U.S.C. § 112, second paragraph. The claim petitioner drafted does not describe applicant's invention.

Finally, petitioner argues that the grader indicated that the limitation "fibers form a brush" must be expressly included in any claim drafted. Petitioner urges that the phrase is not supported and does not have antecedent basis in the written specification and/or drawing. However, the grader only noted:

doesn't state fibers form bristles -6

doesn't state fibers form bristles -2.

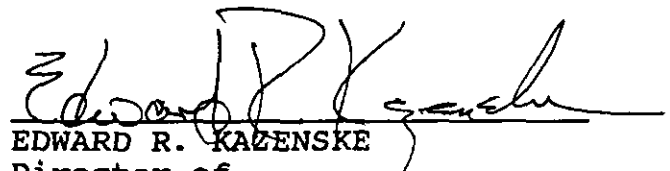
Thus, petitioner's premise is not correct. Consequently, the merits of petitioner's argument are irrelevant.

V

The relief requested on petition is denied.

Date:

12 April 1992


EDWARD R. KAZENSKE
Director of
Interdisciplinary Programs

cc: